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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 2, 1999

COMMONWEALTH OF VIRGINIA, <u>ex rel.</u>	CASE NOS.	PUE990248
	PUE970508	PUE980135
STATE CORPORATION COMMISSION	PUE970546	PUE980224
	PUE970694	PUE980323
v.	PUE970714	PUE980458
	PUE970785	PUE980556
NOCUTS, INC.,	PUE970942	PUE980617
Defendant.	PUE970973	PUE980724
	PUE980001	PUE980807

ORDER OF SETTLEMENT

Pursuant to § 56-265.30 of the Code of Virginia, the Virginia State Corporation Commission ("Commission") is charged with enforcing the provisions of the Underground Utility Damage Prevention Act, ("Act") §§ 56-265.14 et seq. of the Code of Virginia. The Commission's Division of Energy Regulation ("Division"), charged with the investigation of probable violations of the Act, has completed investigations of certain incidents between April 3, 1996, and April 6, 1999, listed in Attachment A, involving NOCUTS, Inc. ("the Company"), the defendant, and alleges that:

(1) NOCUTS, Inc. is a contract locator as that term is defined in § 56-265.15 of the Code of Virginia;

(2) During the aforementioned period NOCUTS, Inc. has violated the Act, by the following conduct:

- (a) Failing on certain occasions to mark the approximate horizontal location of the underground utility lines on the ground to within two feet of either side of the underground utility lines or failing to mark within the time prescribed in the Act, in violation of §§ 56-265.19 A and D of the Code of Virginia; and
- (b) Failing on certain occasions to report to the notification center that lines had been marked or they are not in conflict with the proposed excavation, in violation of §§ 56-265.19 A, B and D of the Code of Virginia.

As evidenced in the attached Admission and Consent document, the Company neither admits nor denies these allegations, but admits the Commission's jurisdiction and authority to enter this Order. As an offer to settle all matters<sup>1</sup> before the Commission arising from the Division's allegations made herein, which include all probable violations presented to the SCC Underground Utility Damage Prevention Advisory Committee through April 6, 1999, and all Staff-initiated actions for no-shows through April 6, 1999, the Company represents and undertakes that:

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<sup>1</sup> Case No. PUE980621, now pending before the Commission, is not included in this settlement.

(1) The Company will pay a civil penalty to the Commonwealth of Virginia in the amount of \$800,000 to be paid contemporaneously with the entry of this Order. This payment will be made by cashier's check, money order, or wire transfer payable to the Treasurer of Virginia and directed to the attention of the Comptroller of the Commission and the Director of the Division of Energy Regulation; and

(2) The Company is taking and shall take the following actions:

- (a) The Company has established and shall maintain a training center to train its locators performing locating of underground utility lines in Virginia;
- (b) The Company shall train and certify all of its locators in Virginia in compliance with the National Utility Locating Contractors Association's ("NULCA") Locator Training Standards and Practices, certify that each of its locators have completed the NULCA training program and maintain training records for each locator;
- (c) The Company shall complete the certification of new locators on an ongoing basis, existing locators with 5 or more damages per 10,000

billable tickets as of June 1, 1999, within 120 business days from the date of this order, and all other locators by February 29, 2000, and shall advise the Commission by affidavit by March 15, 2000, that it has completed the training and certification of all of its locators in Virginia.

- (d) The Company shall conduct annual requalification of its locators, in accordance with the NULCA's requalification guidelines, and maintain requalification records for each locator;
- (e) The Company shall provide to the Division, within 30 business days from the date of this order, the following:
  - (i) A copy of NOCUTS, Inc.'s revised training plan;
  - (ii) A description of the locator certification process;
  - (iii) A schedule for locators' certification; and
  - (iv) Access to locators' training records.
- (f) The Company shall revise its locate form within 60 business days from the date of this order, to include information on:
  - (i) How utility lines were marked;

- (ii) What type of equipment was used to mark the utility lines;
  - (iii) Persons notified;
  - (iv) Date and time of notification; and,
  - (v) A grided area and drawing symbols for sketching the marking of underground utility lines.
- (g) The Company shall, within 70 business days from the date of this order, provide a copy of the revised locate form to the Division;
- (h) The Company shall adopt written procedures for investigation of all damages to underground utility lines and complaints and shall take remedial actions to prevent recurrence of such problems;
- (i) The Company shall adopt and maintain written procedures to ensure use of all operator records, maps, service orders, cards or other documents made available to the Company by the operator indicating or related to the location of underground utility lines when locating such lines;

- (j) The Company shall, within 60 business days from the date of this order, adopt written procedures to respond properly to heavy workloads; and
- (k) The Company shall participate in the Division's "C A R E" public education effort. The Division will provide all materials for use by NOCUTS, Inc. and the locating industry.

The Commission acknowledges that the obligations undertaken by NOCUTS, Inc. under this agreement are part of a compromise settlement agreement. The Commission, being advised by the Staff and finding sufficient basis herein for the entry of this Order, hereby accepts this settlement. Accordingly,

IT IS ORDERED THAT:

(1) Pursuant to the authority granted the Commission by § 12.1-15 of the Code of Virginia, the offer of settlement made by the Company be, and it hereby is, accepted.

(2) The sum of \$800,000 tendered contemporaneously with the entry of this Order is accepted.

(3) The failure of NOCUTS, Inc. to carry out any of the obligations undertaken by it in the compromise settlement agreement set forth herein may result in appropriate proceedings against the Company, including Commission proceedings for the imposition of fines for failure to comply with the agreement or for enforcement of the agreement; and

(4) The Commission retains jurisdiction over this matter for all purposes.

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ADMISSION AND CONSENT

The Defendant, NOCUTS, Inc., admits the jurisdiction of this Commission as to the party and subject matter hereof and, without admitting or denying the allegations made herein by the Division of Energy Regulation, hereby consents to the form, substance, and entry of the foregoing Order of Settlement.

The Defendant further states that no offer, tender, threat, or promise of any kind whatsoever has been made by the Commission or by any member, officer, agent, or representative thereof in consideration of this Admission and Consent.

Date: \_\_\_\_\_

NOCUTS, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_